

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

ANOKA COUNTY COMMUNITY ACTION  
PROGRAM, INC.

Employer

and

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, COUNCIL 14,  
AFL-CIO

Petitioner

Case 18-RC-16616

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>1</sup>

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<sup>1</sup> The Employer, Anoka County Community Action Program, Inc., is a Minnesota corporation with a principal office and place of business located in Blaine, Minnesota. The Employer is a non-profit social service organization administering a variety of human service programs in Anoka and Washington Counties in the State of Minnesota. During the past fiscal year, a representative period, the Employer

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner, in its petition as amended, seeks a unit of all full-time and regular part-time Head Start program instructional employees, including head teachers, home base teachers, teacher assistants and classroom aides, employed at the Employer's Twin Cities metro area facilities; excluding office clerical employees, professional employees, managerial employees, guards, supervisors as defined in the National Labor Relations Act as amended, and all other employees.<sup>2</sup>

The Employer does not dispute that a unit of all full-time and regular part-time Head Start program instructional employees is appropriate. However, the Employer contends that in addition to the classifications sought by the Petitioner, the unit should also include all full-time and regular part-time family service workers, Head Start specialists, recruitment specialists, department secretaries, family development specialists, instructional technicians, health specialists and driver/classroom support positions.

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has purchased and received at its Minnesota facilities goods and services valued in excess of \$50,000 directly from sources and suppliers located outside the State of Minnesota. Within the same period, the Employer realized gross revenues in excess of \$1 million from sales and performance of services.

<sup>2</sup> The parties stipulate that a "regular part-time employee" is an employee who has worked an average of four hours per week during either the 13-week period or the calendar quarter preceding the issuance of this Decision and Direction of Election.

The Employer has been a grantee for the Head Start program since its inception in 1965. Jacqueline Cross, the Head Start director, describes the program as a largely social program that works with children and families to promote self-sufficiency. While the Employer's Head Start classrooms are a very visible component of its Head Start program, the Employer also provides comprehensive services including health, mental health, social services, goal setting and family literacy. Accordingly, although the Head Start program extends beyond classroom education for its enrolled children and their families, the program's "instructional employees" are, by agreement of the parties, the focus of this representation proceeding.

The Employer operates its Head Start program out of six facilities. Three are in Anoka County, Minnesota: the Employer's main facility in Coon Rapids, a one-classroom facility in Bethel, and a one-classroom facility in Columbia Heights. The other three facilities are in Washington County, Minnesota: one-classroom facilities in Forest Lake and Stillwater and a two-classroom facility in Cottage Grove. There are employees working in all the classifications at issue herein at the Coon Rapids facility, where 80 to 85 percent of the Head Start employees work. The Cottage Grove facility has head teachers, assistant teachers, classroom aides, a driver/classroom support person and family service workers. The remaining four facilities, all one-classroom facilities, have a head teacher, assistant teacher and/or classroom aide. As of the time of the hearing, the Employer employed about 17 head teachers; 19 assistant teachers; 10 to 11 classroom aides; and 7 home base teachers.

All of the Employer's Head Start employees are under the ultimate supervision of Director Cross and share common personnel policies emanating from regulations

issued by the U.S. Department of Health and Human Services. The Head Start employees' compensation package—which are based on a job analysis and point factoring process—are extensively regulated by these federal regulations. The day-to-day job duties of the Head Start classifications are also delineated in federally issued performance standards.

Each Head Start classroom is staffed with two or three instructional personnel: a head teacher, an assistant teacher and, possibly, an aide. A typical day in the Employer's part-day, part-year program (its most prevalent program) is described by Director Cross as beginning with a bus ride, after which the children are greeted by the staff and go into their classrooms. After a classroom-based "circle time" with the teachers and aide, a breakfast or snack is provided. There is then a period of creative playtime in the classroom, another snack or lunch, and then some additional playtime before dismissal from the 3-1/2 hour program and the return bus ride home.

### ***Family Service Workers***

The Employer's five family service workers, according to the Employer's job description for the position, "assist in implementing the family services component and provide direct support services to Head Start families." The family service workers work with the families to set up and implement goals and to provide self-sufficiency training, frequently serving as a liaison between the families and community resources.

The family service workers are paid at the same grade—grade 9—as the head teachers and home base teachers, both of whom are included in the unit herein by agreement of the parties. The education and experience requirements for a family service worker are a four-year college education in a human service field or a highly

related area; two or three years of human services experience; or a combination of education and experience in the human services field. No state social work license is required, although one is preferred. Four of the five incumbents in the position have four-year college degrees: one in elementary education and music, and three in social work.<sup>3</sup>

In their written job descriptions, the head teachers and home base teachers are required to have a “CDA,” which is a certification following a skills-based assessment; a college degree in early childhood development, education or a highly related field; experience in working with families in a school or community system; or a combination of education, experience and training. The assistant teachers are required to have a high school education; a CDA or its equivalent; experience with young children; or a combination of education and experience. The classroom aides and driver/classroom support person are required to have a high school education or its equivalent and experience with families in a school or community system.

The family service workers are head teacher-qualified and regularly substitute for absent head teachers in the Head Start classrooms. If the head teacher in a classroom is absent—and the assistant teacher in that room is “head teacher-qualified”—the assistant would then move to the head teacher position and the aide would either move up to assistant or an assistant/aide substitute would be brought in. If the assistant teacher is not “head teacher-qualified,” however, the Employer’s procedure for filling the vacant head teacher slot is to call in a family service worker. The family service worker

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<sup>3</sup> No information was provided on the fifth incumbent, who was on family leave as of the time of the hearing.

job description states as a requirement that family service workers “substitute in all centers when needed.”

The family service workers are supervised by Lousinda Tatley; the head teachers, assistant teachers and classroom aides are supervised by Patti Tuma (in the Anoka County facilities) or Joyce Kulla (in the Washington County facilities).

In addition to their presence in the classrooms as substitute head teachers, family service workers also implement on-going classroom instruction in the “Second-Step Program,” a curriculum designed to teach empathy, anger management and non-violent communication. This curriculum is presented in the classrooms by the family service workers on a regular basis. In addition, family service workers are physically with the classroom instruction personnel twice a day to maintain attendance records; to observe children as necessary for formulating and implementing programs designed to help children with special needs or behavioral issues; and to accompany classes on field trips.

Testimony indicates that family service workers are in the classrooms for up to 60 to 65 percent of their time, a percentage that includes their substitute work, the second-step program, their attendance duties and observational activity.

In the summer of 1999, the Employer expanded more classroom programs into 12-month programs. As many head teachers preferred not to work a 12-month calendar, at least three family service workers worked as head teachers over the summer. In the fall of 1999, upon the return of the 9-month program head teachers, the family service workers then returned to their family service worker positions. While there is no evidence that the head teacher position is necessarily a natural progression

to a family service worker position, one former head teacher permanently moved into a family service worker position in the fall of 1999.

On the basis of the foregoing and the record as a whole, I conclude that the family service workers are Head Start program instructional employees. In reaching this conclusion, I rely particularly on the facts that the family service workers spend more than half their time in the classroom engaged in instructional activity; that they are compensated within the same pay range as head teachers; and that there has been both temporary and permanent interchange between the head teacher and family service worker classifications. In these circumstances, I shall include the family service workers in the bargaining unit herein.

The Petitioner, unlike the Employer, contends that the family service workers are professional employees within the meaning of Section 2(12) of the National Labor Relations Act. While incumbent family service workers hold four-year college degrees, these degrees are not required under either the Head Start regulations or under the Employer's job description. Accordingly, the position of family service worker does not *require* the advanced type of learning or the specialized intellectual instruction and study as described in Section 2(12), either by a degree or licensing. I therefore find that the family service workers are not professional employees within the meaning of the Act. See, e.g., Samaritan Health Services, Inc., 238 NLRB 629 (1978); Child & Family Service of Springfield, 220 NLRB 37 (1975) (social work associates not professional employees, despite the fact that they all held four-year degrees).

### ***Department Secretaries***

The job descriptions of the departmental secretaries I, III and IV define the positions' duties as including typing, filing, answering telephones, greeting the public and performing clerical/secretarial work of varying degrees of difficulty. A high school education or its equivalent is a minimum requirement for all departmental secretary positions. There are currently four individuals working in these classifications. Their compensation levels range from grades 4 – 7.

While the descriptions for levels III and IV mention subbing in centers when needed as among the examples of duties, record testimony reveals that the degree to which secretaries substitute is dramatically less than that of the family service workers or other disputed classifications, and that they are used only if there is no family service worker available and “everyone else is gone,” according to Director Cross. In other words, department secretaries would substitute in the classroom only as a very last resort, i.e., only if no family service workers, recruitment specialists, family development specialists, Head Start specialists, instructional technicians or health specialists were available. Unlike the family service workers, secretaries maintain no documentation substantiating any details about the frequency of their substitution duties.

The Employer repeatedly emphasizes that all the disputed classifications have contact with children and families, and that all classifications are designed to service the Employer's human services mission. However, it is the community of interest among the secretaries and the instructional personnel that determines the appropriateness of inclusion in the instructional unit. The facts that the secretaries—like the instructional



personnel—have contact with the public or are similarly committed to the Employer’s mission are not controlling.

On the basis of the foregoing and the record as a whole, I conclude that the department secretaries are office clerical employees who do not share a sufficient community of interest with the Head Start program instructional employees for inclusion in the unit. In these circumstances, I shall exclude the department secretaries from the bargaining unit herein. See, e.g., L.M. Berry & Co., 198 NLRB 217 (1972); Fireman’s Fund Insurance Co., 173 NLRB 982 (1969) (office clericals lack community of interest with unit employees, despite fact that clericals are engaged in daily tasks which bring them into contact with other unit employees and which are related to unit employees’ work).

### ***Driver/Classroom Support Person***

The classification of driver/classroom support person is filled by one individual working out of the Cottage Grove facility. After delivering the children on the bus route to the facility, this driver—on a daily basis—works in the classroom. Classroom duties performed by the driver/classroom support person are indistinguishable from those performed by the classroom aide classification, and include helping with classroom circle time, playtime, food preparation and service, and clean-up.

On the basis of the foregoing and the record as a whole, I conclude that the driver/classroom support person is a dual-function employee who functions on a daily basis as a classroom aide in addition to driving duties. In these circumstances, I shall include the driver/classroom support person in the bargaining unit herein. See, e.g., Genesis Health Ventures of West Virginia d/b/a Ansted Center, 326 NLRB No. 116

(1998); Alpha School Bus Co., 287 NLRB 698 (1987); Berea Publishing Co., 140 NLRB 516 (1963)(employees performing more than one function for employer may vote, even though they spend less than a majority of their time on unit work, if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit).

***Recruitment Specialist, Family Development Specialists, Head Start Specialists, Instructional Technician, Health Specialists***

There is insufficient record evidence upon which to make a determination as to whether the five classifications of recruitment specialist, family development specialists, Head Start specialists, instructional technician and health specialists share a community of interest with the head teachers, assistant teachers, home base teachers and family service workers which would warrant their inclusion in a bargaining unit of all full-time and regular part-time Head Start program instructional employees.

Accordingly, employees working in these classifications shall be voted subject to challenge.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Head Start program instructional employees employed by the Employer at or out of its Anoka County and Washington County facilities; excluding departmental secretaries and other support staff employees, managers, confidential employees and supervisors, as defined in the Act, as amended.

## **DIRECTION OF ELECTION<sup>4</sup>**

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate in the manner set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>5</sup>

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<sup>4</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 14, 2000**.

<sup>5</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, these lists must be received in the Minneapolis Regional Office, Suite 790 Towle Building, 330 Second Avenue South, Minneapolis, MN 55401, on or before **April 7, 2000**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the American Federation of State, County and Municipal Employees, Council 14, AFL-CIO.

Signed at Minneapolis, Minnesota, this 31st day of March, 2000.

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Ronald M. Sharp, Regional Director  
Eighteenth Region  
National Labor Relations Board

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request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.